

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A

Florida Supreme Court

Case No.: SC00-2226

JUDGE: CYNTHIA A. HOLLOWAY

NO.: 00-143

ANSWER TO FORMAL CHARGES

Come now, Respondent CYNTHIA A. HOLLOWAY and files this Answer to Formal Charges filed by the Judicial Qualifications Commission on October 26, 2000, pursuant to FJQC Rule 9 and says:

INTRODUCTION

~~_____I have~~Respondent has been a Judge since January 1990, having served four years as a county judge and six years as a circuit judge. In order to place the allegations being made against ~~me~~the Respondent into proper perspective, Respondent I feels it is imperative to understand the parties and their relationships. ~~My~~The Respondent s best friends are Bruce and Cindy Tigert, whom ~~I~~she havehas known for at least fourteen years. The Tigert s are closer to ~~me~~the Respondent than some of Respondent ~~my~~own family and ~~we~~they spend most vacations and all holidays together. ~~We~~Cindy sCindy Tigert s sister is Robin Adair, the mother of Parker Adair, who was about 4 years old during the relevant times of this inquiry. Mark Johnson is the biological father of Parker. There had been a protracted and contentious custody dispute between Robin Adair and Mark Johnson. During this custody dispute ~~I~~the Respondent has~~have~~ been called as a witness on two occasions by Robin

Adair, to testify as to some ~~weird~~ unusual behavior by the child and to testify about a heated confrontation that Mr. Johnson instigated with ~~me~~ the Respondent at Jackson's Restaurant on Harbor Island. Both ~~Cindy~~ Ms. Tigert and ~~Robin~~ Ms. Adair have continuously contacted ~~me~~ the Respondent concerning ~~Parker~~ this litigation and up until the incidents giving rise to this matter the Respondent had never interjected herself into this controversy other than as a witness. It has been very emotional because a small child is at the center of this controversy. ~~I~~ More over the matter is highly sensitive to ~~me~~ the Respondent because ~~I~~ she has two girls of ~~my~~ her own, who are also close to Parker.

Mark Johnson has been openly hostile to ~~me~~ the Respondent personally and has made threats to others concerning ~~me~~ the Respondent. He has gone so far as to tell others that he was going to make sure that ~~I~~ the Respondent lost ~~her~~ my job. He informed others that he has influential political contacts and would use those contacts to ruin ~~my~~ the Respondent's career. His statements include the fact that he is a close friend of Tony Coelho, formerly a close assistant and confidant to President Clinton, and that his work for the government would enable him to pull strings to get ~~my~~ Respondent's job, and that he has friends in Tallahassee.

In June 1999, at Jackson's Restaurant in Tampa, Mr. Johnson confronted ~~me~~ the Respondent as ~~she~~ I was waiting to meet friends for dinner. When he first approached, ~~I~~ the Respondent asked him to leave ~~her~~ me alone. ~~I~~ The Respondent repeatedly asked Mr. Johnson to leave ~~me~~ her alone and to return to his seat, but he refused and kept getting louder and his behavior became more menacing. ~~I~~ The Respondent became fearful that Mr.

Johnson would be violent towards ~~me~~ her and he did in fact slam his hand upon the table at which I ~~she~~ was seated. The bartender immediately removed Mr. Johnson from the establishment based on his unruly behavior. This was witnessed by several patrons whose names I ~~the Respondent~~ hasve retained and whom are willing to testify concerning the incident.

ALLEGATION 1.

1. You were a witness in the case of Adair v. Johnson, No. 97-11697, Circuit Court of Hillsborough County (the Adair case), and a friend of Ms. Robin Adair, the petitioner in that case, and members of her family. This Adair case involved the custody of Parker, a minor child of Robin Adair, petitioner, and Mark Johnson, respondent. During the pendency of this case you abused your powers as a judge, and improperly utilized the prestige of your office by the following actions:

On or about February 24, 2000, you telephoned Detective John Yaratch of the Tampa Police Department, who was then conducting a criminal investigation involving the parties in the Adair case, and sought to influence his investigation, inter alia, by suggesting that an interview of the daughter of the parties be held at the Child Advocacy Center, by furnishing Mr. Yaratch with your cellular phone number, and by requesting that he keep you apprised of developments in the case. In accordance with your request, Detective Yaratch telephoned you on or about March 3, 2000, and discussed his findings, at which time you evidenced your

~~despleasure~~ displeasure with his conclusions.

RESPONSE

With regard to ~~my~~ Respondent s telephone call to Detective Yaratch, it is significant to understand what had taken place in the preceding days. Parker Adair had made certain statements regarding possible sexual misconduct by her biological father to a school interviewer. Children and Family Services were contacted about this possible sexual abuse, and the child was at risk of being removed from her home and placed in shelter status. Parker was 4 years old at the time. Robin Adair and Cindy Tigert called the Respondent ~~me~~ very upset that the anticipated investigation was not being conducted. Apparently no official had spoken to the teacher to whom the statements were made or to Parker. ~~I~~ The Respondent called Detective Yaratch to request that **if** an interview had to be done with the child, (which ~~I~~ the Respondent thought had to be done at the Children s Advocacy Center), and/or the teacher, that it please be done as soon as possible. ~~I~~ The respondent did not intend to influence Detective Yaratch regarding the outcome. ~~I~~ She was ~~simple~~ simply concerned that the facts were growing stale and asked that Detective Yaratch please not let this slip through the cracks.

Detective Yaratch stated in his deposition, taken August 4, 2000, that she did not specifically say anything to intimidate, coerce or try to influence, just the fact that I know this person and that contact was inappropriate. I am not saying she did anything wrong . (Yaratch deposition page 41, line 7) He again said, She did not say anything

inappropriate. (Yaratch deposition page 42, line 5).

With respect to the second contact with Detective Yaratch on or about March 3, 2000, ~~I~~the Respondent does not recall this conversation or anything about it and doubts that it took place. The Respondent~~I~~ was out of the country from February 27, 2000 through March 2, 2000. ~~I~~The Respondent did not return to the office until March 3, 2000. ~~I~~The Respondent had two extremely heavy dockets that day, including 135 cases on the morning docket and 96 cases set for pre-trial in the afternoon. ~~My~~The Respondent s judicial assistant, Janice Wingate, does not call ~~me~~her to leave the bench except in the case of an emergency. The Respondent~~I~~ has~~have~~ checked ~~my~~her message slips and they indicate that she~~I~~ did not receive a message from the detective that day or any day thereafter. In addition, ~~my~~the Respondent s calendar shows that she~~I~~ had a noon appointment that day out of the office. Ms. Wingate does not recall receiving a call from the detective that day, only the call from him on February 24, 2000.

Furthermore, the police report written by Detective Yaratch in March of this year, purportedly on March 3, 2000, does not contain any reference to a second conversation nor any indication that the detective ever discussed the outcome of his investigation with Respondent in anyway or at anytime. To this day the only knowledge the Respondent has as to the~~I do not know the~~ outcome of his investigation is what is contained in the police report attached to Detective Yaratch s deposition.

ALLEGATION 1. c.

- c. On or about the afternoon of Friday, March 3, 2000, you entered the hearing room of the Honorable Ralph C. Stoddard, presiding judge in the Adair case, and spoke to Judge Stoddard about the case in the presence of others in a loud, angry, and temperamental manner, and shook your finger at the judge. Among other things, you criticized the time it took for the parties in the Adair case to obtain an emergency hearing in Judge Stoddard's division, criticized Judge Stoddard's leaving the daughter of the parties in the custody of a third party, stated it would concern you if the respondent father obtained custody of the child, insisted or demanded that Judge Stoddard hold an early hearing in the matter, and falsely suggested that the attorney for the respondent in the case had a hold on Judge Stoddard. In a further attempt to influence Judge Stoddard's decision in the case, you made a comment about the two people in the world dearest to me, (which Judge Stoddard interpreted to mean the petitioner and her daughter) and stated that the petitioner was a good mother who was protective of her child. This ex parte contact contributed to Judge Stoddard's recusal in the case on the morning of March 6, 2000.

RESPONSE

As a result of the allegations Parker Adair expressed to the interviewer a shelter hearing was held on Saturday, February 26, 2000 and Parker was in fact sheltered with her day school teacher ~~on February 26, 2000~~. This ruling was made contrary to the recommendations of Children and Family Services, which recommended sheltering with the mother. The shelter hearing was, by coincidence, conducted before Judge Stoddard. Judge Stoddard was the presiding judge overin the custody dispute and also happened to be the duty judge the weekend of the shelter hearing. At the shelter hearing attorney Ron Russo announced that he had obtained an emergency hearing for Monday February 28, 2000. Because the allegation of sexual misconduct had only been made 3 or 4 days earlier and this was a Saturday, the emergency hearing time must have been obtained within that 3 to 4 day time period. The Respondent left the country for a short vacation on Sunday February 27, 2000 and assumed that the shelter situation would be resolved at the February 28, 2000 hearing. On the evening of March 2, 2000, ~~I~~ the Respondent returned from ~~out of the country~~ her vacation to learn from Cindy Tigert that Parker was still in shelter. On the morning of March 3, 2000 Robin Adair called ~~me~~ the Respondent hysterical that ~~she~~ her attorney could not get a hearing on the shelter status for another week and one-half. Ms. Adair also complained that Ron Russo, attorney for Mark Johnson, had been able to schedule a the emergency hearing on February 28, 2000, on very short notice. ~~She~~ Ms. Adair could not understand ~~why she could not~~ her inability to get an earlier hearing on the shelter status in light of Mr. Russo's ability to quickly obtain hearing time ~~on unrelated matters that certainly did not rise to the level of seriousness of removing this young child from her home~~. Thinking of a four year old child being taken from her family and the

confusion and anxiety ~~she~~ the child must have been experiencing, ~~I~~ the Respondent went to ask Judge Stoddard to provide the ~~family~~ parties with an earlier hearing date on the shelter status. It should be pointed out that the Respondent did not interrupt a hearing or any other court proceeding and that the only persons present were courthouse personnel. ~~I~~ The Respondent believes ~~Ishe~~ told ~~him~~ Judge Stoddard that neither party probably deserved the child but that surely this 4 year old child should not continue to live in shelter status with a teacher when there were other family members with whom she could live. ~~I~~ The Respondent was very emotionally distraught during ~~my~~ her conversation with Judge Stoddard due to ~~my~~ her concern for the emotional well being of a child of whom ~~I~~ she am is very fond and therefore ~~I~~ she may have exercised poor judgment. However, ~~I~~ the Respondent ~~want~~ would like to make it clear that ~~I~~ she was not trying to influence Judge Stoddard s decisions regarding this case, ~~my~~ her only concern was that a hearing occur as quickly as possible so the child could be returned to family members. The Respondent would also like to clarify that she was neither upset with Judge Stoddard, nor critical of Judge Stoddard s decisions in this case, but was quite upset with the circumstances regarding the fact that the 4-year-old remained in shelter status. The Respondent is not and has never been critical of Judge Stoddard s decisions given the difficult facts and circumstances of this case.

———~~I have~~ The Respondent has since spoken to Judge Stoddard to express ~~my~~ her sincere apology for this emotional behavior.

ALLEGATION 2, 4a. and 4b.

On or about July 19, 2000, in Tampa, Florida, you were deposed in the Adair case by the respondent acting pro se. You were represented by your husband, Todd Alley, Esq. and your brother James T. Holloway, Esq. and Ms. Adair was represented by her counsel. Upon being duly sworn you testified, inter alia as follows:

[By Respondent] Have you or anyone in your office ever contacted law enforcement in this case?

A. Yes.

Who and when, if you can recall?

I think just to determine who was going to investigate the most recent allegations, just to find out the name of the detective attached to the file.

Q. Did you ever speak to the detective?

A. I've spoken to the detective a lot, but not necessarily about this case. I don't really recall whether I spoke to him directly or not. I don't believe that I did.

This testimony as initially given was false or misleading because you had in fact contacted Detective Yaratch as set forth in paragraph 1(a), above. You subsequently executed an

errata sheet described in paragraph 4a.

4a. On or immediately before August 8, 2000, you executed an errata sheet to your deposition described in paragraphs 2 and 3 above, stating in pertinent part as follows:

Page 35, Line 19 [the testimony quoted in paragraph 2 above] ? This deposition was taken after I had spent three hours at the funeral of Harry Lee Coe. Upon further reflection, I do recall a brief telephone conversation with Detective Yaratch. During this conversation, I informed Detective Yaratch that I did not want to discuss the facts of this investigation but hoped that the investigation would be handled in a timely fashion.

Despite these purported corrections, your testimony relating to your conversation with Detective Yaratch remained incomplete and misleading because your testimony as corrected was not a truthful or complete account of your conversation with Detective Yaratch.

RESPONSE

~~With all due respect to the Investigative Panel,~~ it is patently unfair and contrary to the Florida Rules of Civil Procedure and Florida case law to separate the deposition from the errata sheet. The ~~Investigative Panel~~'s separation of the deposition from the errata sheet,

despite being contrary to Florida law, is the only way one can characterize ~~my~~-the Respondent s testimony as false. As the court stated in Motel 6, Inc. v. Dowling, 595 So.2d 260 (1st DCA Fla., 1992):

Rule 1.310(e), Florida Rules of Civil Procedure, expressly permits a witness to review his deposition and make corrections, in both the form and substance, to his testimony

One of the reasons a witness reads his deposition is to make permissible corrections to his testimony. **Once the changes are made, they become a part of the deposition just as if the deponent gave the testimony while being examined,** and they can be read at trial just as any other part of the deposition is subject to use at trial...

If the motel (*the examiner*) wished to cross-examine Hickox (*the deponent*) regarding the changes, the burden was on the motel to reopen the deposition. (at pages 261 & 262 emphasis added)

See also, Feltner v. Internationale Nederlanden Bank, N.V., 622 So.2d 123 (4th DCA Fla., 1993).

In addition, the facts and circumstances surrounding the taking of this deposition are extremely significant. The deposition taken by Mark Johnson, a pro se litigant, was conducted on the day of Harry Lee Coe, III s funeral. I-The Respondent attended the service and proceeded immediately thereafter to the deposition. I-The Respondent had been extremely upset by the suicide and the events of the preceding week. In fact, ~~we~~-she was almost an hour late arriving at the deposition. Notwithstanding the unusual events of the day and ~~our~~-the Respondent s desire to have the deposition rescheduled, Mr. Johnson

indicated that he had come from Washington, D.C., and wanted to proceed at that time. In fact, I ~~the Respondent~~ was quite candid at the beginning of the deposition that I ~~she~~ was under considerable emotional distress and not thinking as clearly as usual.¹

Further, Mr. Johnson had continuously threatened ~~me~~ ~~the Respondent~~ personally, including the incident at Jackson's Restaurant, and had told third parties that he intended to get ~~my~~ ~~her~~ job. He has indicated on numerous occasions that he is politically well connected. In addition, prior to ~~my~~ ~~the Respondent's~~ deposition, I ~~she~~ had been made aware of an investigation by the Judicial Qualifications Commission and because of his threats in the past, I ~~the Respondent~~ assumed Mr. Johnson had instigated the investigation.

At the time Mr. Johnson asked ~~me~~ ~~the Respondent~~ about speaking to Detective Yaratch, I ~~the Respondent~~ simply did not recall the conversation. Even the detective indicates that it was a brief conversation that had taken place five months prior to the deposition. Certainly the events of the day had taken its toll on ~~my~~ ~~her~~ concentration and recall. Once the deposition was over and I ~~the Respondent~~ returned to ~~my~~ ~~her~~ office, I ~~she~~ remembered the conversation with Detective Yaratch while discussing the matter with ~~my~~ ~~her~~ staff. I ~~The Respondent~~ knew that this answer could be corrected on an errata sheet and I ~~she~~ called her attorney immediately to advise him of her recollection.

¹ On page 6, lines 21 through page 7, line 1, I gave the following testimony:
When did you and I first meet?

A. I think at the Tigert residence. I don't know when. I couldn't even narrow it down to a year at this point. **Obviously I ve had a fairly bad day and so I m a little confused on things.** I can't think of the time. If I recall you were swimming in the pool with Parker. (Emphasis Added)

The Respondent has previously provided the affidavits of ~~my~~-her attorneys outlining when I-she notified them of the need to create an errata sheet and about ~~my~~-her recollection of the conversation. In furtherance of this position, Ray Brooks, the attorney for the petitioner in the custody dispute, executed an affidavit, previously provided to the JQC outlining the sequence of this disclosure and that the errata sheet was already being prepared before the deposition of Detective Yaratch was taken.

Given the Rules of Civil Procedure and the case law concerning the use of errata sheets, the deposition testimony set forth above must be read as follows as to the conversation with Detective Yaratch:

Did you ever speak to the detective?

A. I ve spoken to the detective a lot, but not necessarily about this case. I don t really recall whether I spoke to him directly or not. I don t believe that I did. Upon further reflection, I do recall a brief telephone conversation with Detective Yaratch. During this conversation, I informed Detective Yaratch that I did not want to discuss the facts of this investigation but hoped that the investigation would be handled in a timely fashion.

———I-The Respondent adamantly ~~deny~~-denies that ~~my~~-her testimony relating to ~~my~~-her conversation with Detective Yaratch was false and misleading because as corrected it was a truthful and complete account of ~~my~~-her conversation with Detective Yaratch. —The Respondent related a description of the conversation to the best of ~~my~~-her recollection at the time. Unlike Detective Yaratch, I-she did not have a police report to testify from or to use

to refresh ~~my~~her recollection. ~~My~~The Respondent's testimony is not inconsistent with the detective except with respect to a second conversation, which Respondent still does not recall. With respect to that conversation I—she would incorporate ~~my~~her response to Allegation 1.

ALLEGATION 3, 4a, 4c

In the same deposition described in paragraph 2 above, you further testified as follows:

[By Respondent] When did you learn that Parker [the daughter of the petitioner and respondent] had been sheltered?

On a Saturday morning [Saturday, February 26, 2000]. I don't really recall the date or the time. I was at the baseball field, I think, or softball field.

Did Cindy Tigert [sister of the petitioner] call you?

Yes

.

What was your reaction?

I was shocked.

Did you do anything in response to that development in the case?

I don't recall being able to do anything at that point.

Did you contact Ralph Stoddard?

No.

Did you telephone him, contact him in any way?

No.

Did you go see him?

No. (emphasis supplied)

This testimony as initially given was false or misleading in that you in fact did contact and speak with Judge Stoddard concerning the Adair case as set forth in paragraph 1(b), above. You subsequently executed an errata sheet described in paragraph 4a.

4a. On or immediately before August 8, 2000, you executed an errata sheet to your deposition described in paragraphs 2 and 3, stating in pertinent part as follows:

Page 38, Line 22 through Page 39, Line 15 [the testimony quoted in paragraph 3 above] - My responses to these questions relate to the Saturday [February 26,

2000] of the emergency shelter hearing referenced on Page 38, Line 24.

The corrections further are false, incomplete or misleading with regard to your contact with Judge Stoddard because they do not respond fully and accurately to the questions propounded to you, namely, (a) Did you do anything in response to that development in the case? ; (b) Did you contact Judge Stoddard? ; (c) Did you telephone him, contact him in any way? and, (d) Did you go see him? These questions were not restricted to any specific date and required you to disclose the contact with Judge Stoddard described in paragraph 1(b), above, and you failed to do so. You have admitted to the Investigative Panel at the Rule 6b hearing on October 13, 2000, that it was your intention not to disclose or confirm your visit with Judge Stoddard on March 3, 2000, and your testimony and the purported changes collectively served that purpose.

RESPONSE

Because of the previous explanation regarding the Florida Rules of Procedure and case law, this testimony and the errata sheet must also be considered together or as one.

In preparation for this deposition, the Respondent's counsel had advised ~~me~~her that ~~I~~the Respondent was being deposed as a fact witness regarding the pending custody case (As set forth above, ~~I~~the Respondent had already testified twice at hearings involving this dispute and, according to what Mr. Johnson had told ~~my~~her attorney, ~~I~~the Respondent was listed as a possible witness by Robin Adair). ~~I~~The Respondent was instructed to only

answer the question asked and not to provide additional or gratuitous information. ~~My~~The
Respondent s lawyers further instructed ~~me~~her that they did not intend to allow Mr.
Johnson to ask questions of ~~me~~her regarding ~~my~~her conversation of March 3, 2000, with
Judge Stoddard. It was their opinion that, knowing the investigation was pending, any
questions concerning the subject of the JQC investigation would only be intended as
harassment. ~~I~~The Respondent was informed that, if Mr. Johnson asked such questions, an
appropriate objection would be made, after which Mr. Johnson could attempt to file a
motion to compel and ~~I~~that she would be entitled to seek a motion for a protective order.
This course of action is allowed by the Florida Rules of Civil Procedure and ~~I~~there is
nothing in the Judicial Canons that limits ~~my~~the Respondent s ability to avail ~~myself~~
herself of the protections of those rules, especially given Mr. Johnson s threats and the
other facts and circumstances surrounding this deposition. It was ~~my~~the Respondent s
attorney s opinion that, because Judge Stoddard had already recused himself before the
taking of ~~my~~her deposition, any inquiry as to ~~my~~her contact with Judge Stoddard should
have come from the JQC, not from Mr. Johnson and that any probative value to her
answering these questions was outweighed by their harassing nature. ~~It might even seem~~
~~that the JQC was having Mr. Johnson take the deposition for that very purpose.~~ ~~I am~~ It is
respectfully submitted that whether or not Respondent s counsel s advice or opinion was
correct was a matter of law and not of ethics.

Respondent has previously provided affidavits from ~~from~~ C. Todd Alley, Esquire
and James T. Holloway, Esquire confirming the advice ~~I~~she was given and their intention
to object to questions concerning the March 3, 2000 conversation with Judge Stoddard.

When Mr. Johnson asked ~~me~~ the Respondent whether or not ~~I~~ she had contacted Judge Stoddard by phone or saw him, ~~I~~ the Respondent construed those questions to relate to the events of the Saturday when ~~I~~ she learned Parker had been sheltered and, therefore, ~~I~~ she answered no. The questions were asked as part of a series of questions relating to the Saturday shelter hearing and it should be noted that Judge Stoddard was the judge who presided over the hearing on that Saturday. ~~My~~ The Respondent s lawyers also felt the questions related to that Saturday as they had advised ~~me~~ her that they would object to any other questions and no such objection was registered at the time. Ray Brooks, the attorney for the Petitioner, Robin Adair, who was also present at the deposition, has executed an affidavit indicating that he too, recalls that this series of questions related to what actions ~~I~~ the Respondent took, if any, on that particular Saturday. Mr. Brooks further states that if he had believed the questions were not so limited he would have made objections himself. The ~~way~~ manner, tone and context in which ~~the~~ this series of questions were asked, ~~the tone in which they were asked and the manner in which they were asked~~ led everyone to believe ~~these~~ left the inescapable conclusion that these questions were with regard to the Saturday of the shelter hearing.

Further, it is ~~my~~ the Respondent s belief that Mr. Johnson himself understood those questions and answers to be with regard to the Saturday of the shelter hearing in that, during the deposition, Mr. Johnson asked additional questions about Judge Stoddard s recusal and other contact ~~I~~ the Respondent may have had with him. At that time ~~my~~ the Respondent s counsel, as he had informed ~~me~~ her he would, objected to the questions and instructed ~~me~~ her not to answer. (Holloway deposition page 39, line 16 and page 41, line 5)

Finally, ~~I~~ the Respondent does not believe that ~~my~~ her clarifications with regard to the questions concerning Judge Stoddard contained in the errata sheet are in any way false, incomplete or misleading. The errata sheet merely clarified that the temporal context of ~~my~~ her answers were limited to the referenced Saturday morning. It was prepared in an abundance of caution because when reviewing the black and white transcript ~~there was a~~ Respondent became concerned that someone might attempt to take those questions completely out of context by expanding the time frame beyond the specifically referenced Saturday morning ~~(which appears to be what the investigative panel has done).~~ Given the decision not to allow Mr. Johnson to utilize the domestic court as a vehicle by which he could further his avowed intent to get ~~my~~ her job, the manner in which the errata sheet was prepared should be completely understandable.

Again, given the Florida Rules of Civil Procedure and the case law quoted above as to the effect of errata sheets, the deposition testimony concerning the contact with Judge Stoddard must be read as follows:

[By Respondent] When did you learn that Parker [the daughter of the petitioner and respondent] had been sheltered?

On a Saturday morning [Saturday, February 26, 2000]. I don t really recall the date or the time. I was at the baseball field, I think, or softball field.

Did Cindy Tigert [sister of the petitioner] call you?

Yes

What was your reaction?

I was shocked.

Did you do anything in response to that development in the case?

I don't recall being able to do anything at that point.

Did you contact Ralph Stoddard?

No, **not on that Saturday.**

Did you telephone him, contact him in any way?

No, **not on that Saturday.**

Did you go see him?

No, **not on that Saturday.** (emphasis supplied)

— I The Respondent submits that the position taken by the charging document ~~the~~

~~taken by the Investigative Panel~~ would prohibit a judge from availing himself/herself of the protections of the Florida Rules of Civil Procedure from a hostile examiner. If Mr. Johnson does not like the fact that ~~my~~ the Respondent s attorneys utilized these rules to make proper objections, or if he believes the objections to be improper, then he can file the appropriate Motion to Compel. At that time, ~~my~~ the Respondent s attorneys will file a Motion for Protective Order and the court can determine the appropriateness of ~~my~~ the Respondent s attorneys' objections and, if necessary, compel ~~me~~ her to respond to questions regarding ~~my~~ her contact with Judge Stoddard on March 3, 2000. These are legal not ethical issues. The charging document proclaims that judges cannot avail themselves of the Florida Rules of Procedure and protect themselves from harassing inquiry.

Respectfully submitted,

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By: _____

Scott K. Tozian
Counsel for Respondent
Florida Bar No.: 253510

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail on: Beatrice A. Butchko, Esq., Special Counsel, One Biscayne Tower, Suite 2300, 2 South Biscayne Blvd., Miami, Florida 33131; Honorable James R. Jorgenson, 3rd District Court of Appeals, 2001 S.W. 117th Avenue, Miami, Florida 33175-1716; John R. Beranek, Esq., Counsel to the Hearing Panel, P.O. Box 391, Tallahassee, Florida 32302.

By: _____
Scott K. Tozian